



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

May 23, 1962

Hon. William A. Harrison
Commissioner of Insurance
Austin, Texas

Opinion No. WW-1337

Re: Authority of the Insurance
Department to issue original
or renewal local agents'
licenses to firms or partner-
ships composed partly of
individuals who do not
qualify by examination as
local recording agents and
who are not actively engaged
in writing insurance.

Dear Mr. Harrison:

You have requested that this office render its opinion
on the following questions which we quote from your letter:

"1. Is this Department authorized to issue
either an original or renewal of local recording
agent's license to a firm or partnership if such
firm or partnership is composed partly of indi-
viduals who qualify as local recording agents and
partly of individuals who do not qualify and who
are not active in the writing of insurance bus-
iness? In answering this question, assume that
all of the persons interested in such firm are
partners.

"2. If your answer to question No. 1 is in
the negative, is this Department authorized to
issue either an original or renewal of local
recording agent's license to a firm or partnership
if such firm or partnership is composed partly
of individuals who qualify as local recording
agents and partly of individuals who have an interest
only in the profits of such firm and have no voice
or authority in the operation of such firm? (i.e.
the surviving widow of a partner with such widow's
interest limited by the partnership agreement to an
interest only in the profits of the firm with the
surviving partners to have full authority in its
operation.)

"3. If your answer to question No. 1 or question No. 2 is in the affirmative, I request your opinion as to whether or not this Department should require all persons named in the license to meet the requirements of Section 6 of Article 21.14 (pertaining to written examination) before issuing such license."

These questions are directed specifically to the provisions of Article 21.14 of the Texas Insurance Code, the relevant portions of which read as follows:

". . .

"Sec. 3. Application for License; To Whom License May be Issued; Corporations Not to Be Licensed.--When any person or firm shall desire to engage in business as a local recording agent for an insurance company or insurance carrier, he shall make application for a license to the Board of Insurance Commissioners, in such form as the Board may require, which application shall require a signed endorsement by General or State or Special Agent of a qualified insurance company or insurance carrier that applicant is a resident of Texas, trustworthy, of good character and good reputation, and is worthy of a license. The Board is authorized to issue licenses to firms or to individuals engaging as partners in the insurance business, provided the names of all persons interested in such firm are named in the license, and each named as active in the business of the partnership qualify, and it be established that none not active have interest in partnership principally to have written and be compensated therefor for insurance on property controlled through ownership, mortgage or sale, family relationship, or employment; and provided further, that all licensed agents must be residents of Texas. . . .The Board shall not issue a license to a corporation.

"Sec. 4. Acting Without License Forbidden.--It shall be unlawful for any person or firm or partnership to act as a local recording agent or solicitor in procuring business for any insurance company, corporation, interinsurance exchange, mutual, reciprocal, association, Lloyds or other insurance carrier, until he shall have in force

Hon. William A. Harrison, page 3 (WW-1337)

the license provided for herein.

"Sec. 5. Active Agents or Solicitors Only to Be Licensed.--No license shall be granted to any person, firm or partnership, either as a local recording agent or solicitor, for the purpose of writing any form of insurance, unless it is found by the Board of Insurance Commissioners that such person or firm is, or intends to be, actively engaged in the soliciting or writing of insurance from the public generally; that each person or individual of a firm is a resident of Texas, of good character and good reputation, worthy of a license, and is to be actively engaged in good faith in the business of insurance, and that application is not being made in order to evade the laws against rebating and discrimination either for the applicant or for some other person. Nothing herein contained shall prohibit his insuring his own property or properties in which he has an interest; but it is the intent of this section to prohibit coercion of insurance and to preserve to each citizen the right to choose his own agent or insurance carrier, and to prohibit the licensing of an individual or firm to engage in the insurance business principally to handle business which he controls only through ownership, mortgage or sale, family relationship or employment, . . .

"Sec. 6. Examination Required; Exceptions.--If applicant for a local recording agent's license has not prior to date of such application, been licensed as a local recording agent, or if the applicant for a solicitor's license has not been licensed as a local recording agent or as a solicitor prior to date of such application, the Board of Insurance Commissioners shall require such applicant to submit to a written examination covering all kinds of insurance or contracts, which license if granted, will permit the applicant to solicit. Any applicant for local recording agent's license who has prior to the date of such application been licensed as a local recording agent, shall be entitled to a local recording agent's license without examination, provided the other requirements of this article are met. Any applicant for solicitor's

license who has been licensed as a local recording agent or as a solicitor prior to date of such application, shall be entitled to a solicitor's license without an examination, provided the other requirements of this article are met."

In considering your first question, we are faced at the outset with what appears to be a basic repugnancy in the provisions of Section 3 and Section 5. The language of Section 3 clearly contemplates and authorizes that under certain conditions, a firm or partnership be licensed as a local recording agent and that such firm or partnership may consist of persons interested in the firm or partnership who are not active in the business of the firm or partnership. Section 5 seemingly nullifies this aspect of Section 3 by providing that before a license be granted to any person, firm or partnership, the Board of Insurance Commissioners must find that". . . such person or firm is, or intends to be, actively engaged in the soliciting or writing of insurance from the public generally; that each person or individual of a firm is a resident of Texas, of good character and good reputation, worthy of a license, and is to be actively engaged in good faith in the business of insurance, . . ."

In order to give the just quoted phrase of Section 5 the effect of nullifying the authority granted by Section 3 to license firms or partnerships with inactive partners, we must attribute to the Legislature what we consider to be a wholly frivolous and mischievous intent to make a grant of authority in one section of an act and take away this authority in a subsequent section of the same act. We are neither disposed to impute such purpose to the Legislature nor are we permitted by the rules of statutory construction to strike down one section as conflicting with another when there is some other construction which can be given the sections in question whereby they may be harmonized and both allowed to operate. J. I. Case Threshing Machine Co. v. Howth, 116 Tex. 434, 293 S.W. 800 (1927); Brown v. Chancellor, 61 Tex. 437 (1884); Hanrick v. Hanrick, 54 Tex. 101 (1880).

In harmonizing the provisions of Section 3 and Section 5 it is significant to note that the Board's authority, under Section 3, to grant a license to a firm or partnership which consists of active and inactive members is, among other things, predicated upon the condition that ". . . each named as active in the business of the partnership qualify, and it be established that none not active have interest in partnership principally to have written and be compensated therefor for insurance on

Hon. William A. Harrison, page 5 (WW-1337)

property controlled through ownership, mortgage or sale, family relationship, or employment;" This specific provision, together with the general language of Section 3, evinces the intention of the Legislature to differentiate between the members of a firm or partnership which applies for a license and provide different standards for the active and inactive partner. The active partners on the one hand are specifically required to "qualify", this means that they must meet the same standards as any individual applicant who is not connected with a firm or partnership. On the other hand, the members of the firm or partnership who are not active are merely required to be named in the firm or partnership license and it must be established that none of the inactive partners have an interest in the firm or partnership principally to have written and be compensated for insurance on controlled or owned property. In our opinion Section 3 specifies all of the qualifications applicable to the inactive members of a firm or partnership and they are not subject to the provisions of Section 5 of Article 21.14 of the Texas Insurance Code.

Section 5 was intended by the Legislature to apply to those who must "qualify" for a license, i.e. individual applicants for a license and those members of a firm or partnership who are active in the business of the firm or partnership.

Therefore, your first question is answered in the affirmative and you are hereby advised that the Board does have the authority to issue a local recording agent's license to a firm or partnership which consists of both active and inactive partners. In order that our holding in this respect be not misunderstood, we here point out that the inactive or active partners may not be limited partners and we hereby reaffirm our prior holding to this effect in Attorney General's Opinions O-2453 (1940) and O-2453-A (1940).

Since we have answered your first question in the affirmative it is unnecessary to answer your second question.

In the course of answering your first question, we have held that it is the partners who are active in the business of the firm or partnership who must qualify in the same manner as any applicant for an individual license and that the inactive partners are required to meet no qualifications other than those imposed by Section 3, consequently your third question is answered in the negative and you are hereby advised that only those members of a firm or partnership who are active in the business

Hon. William A. Harrison, page 6 (WW-1337)

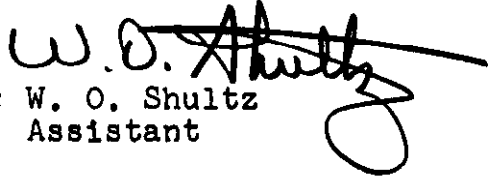
of the firm or partnership are required to comply with Section 6 of Article 21.14 of the Texas Insurance Code.

S U M M A R Y

The Board of Insurance Commissioners is authorized to issue a local recording agent's license to a firm or partnership composed of active and inactive members, provided that neither the active or inactive partners are limited partners; Sections 5 and 6 of Article 21.14 of the Texas Insurance Code apply to the active partners but do not apply to the inactive partners.

Very truly yours,

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